

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 2:17-CR-20406

v.

HON. PAUL D. BORMAN

JEROME DURDEN,

Defendant.

DEFENDANT’S MOTION FOR JUDICIAL RECOMMENDATION FOR
HOME CONFINEMENT

NOW COMES Defendant, Jerome Durden, by and through his attorney, Judith S. Gracey, and in support of his Motion for Judicial Recommendation for Home Confinement states as follows:

1. That on November 13, 2018, Defendant was sentenced by this Honorable Court to a prison term of 15 months. The Court allowed him to surrender voluntarily to begin his sentence.
2. That Defendant surrendered to FCI Milan located in Milan, Michigan on August 2, 2019 to begin serving his sentence.
3. That Defendant is currently due for release from prison on August 28, 2020.

4. That Pursuant to 18 U.S.C. 3624(c)(2), the BOP may place an inmate in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or six (6) months if they are a low risk offender.
5. That while under that Act, Mr. Durden does not qualify for home confinement at this time, the following demonstrates that judicial recommendation of home confinement for the remainder of his prison time should be issued due to extraordinary circumstances in the instant case.
6. That at the time of this motion, the coronavirus COVID-19 has become a devastating public health risk in the United States of America, which includes the State of Michigan.
7. That on March 10, 2020, Governor Gretchen Whitmer declared a State of Emergency in the State of Michigan due to the spread of the COVID-19 virus.
8. That on March 13, 2020, President Donald Trump issued a State of Emergency in the United States of America due to the spread of the COVID-19 virus.
9. That on March 13, 2020, the Honorable Denise Page Hood, Chief Judge in the Eastern District of Michigan entered an Administrative Order regarding COVID-19.

10. That the Center for Disease Control and Prevention states that older adults with serious chronic medical conditions like Heart Disease, Diabetes and Lung Disease are more likely to contract the disease and suffer possibly fatal outcomes.
11. That the CDC has issued guidance that individuals at higher risk of contracting COVID-19 take immediate preventative actions, including avoiding crowded areas and staying home as much as possible.
12. That Defendant has three of the four risk factors associated with COVID-19.
13. That Defendant is Sixty-Four (64) years old and suffers from Type 2 Diabetes and Hypertension.
14. That if Defendant remains incarcerated, he is at a higher risk to contract COVID-19 and pass it on to other inmates.
15. That if the Defendant acquires the virus while incarcerated, he is at risk for possibly fatal outcomes that could be better treated if he is granted home confinement.
16. That this Court should consider the total harm and benefits to prisoner and society that continued imprisonment will yield, relative to the heightened health risks posed to Mr. Durden during this rapidly encroaching pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring)

(calling for heightened judicial scrutiny of the projected impact of jail and prison conditions on a defendant).

17. That the Defendant has been incarcerated for over seven months with no disciplinary infractions.

18. That the Defendant has completed and/or participated in several prison programs without incident.

19. That Defendant is a non-violent offender.

20. That Defendant is a first-time offender with no other criminal record.

21. That a recommendation by this Court, if followed by the BOP, would not shorten the Defendant's sentence. Instead, it would allow him to serve the additional months of his sentence in home confinement where he would continue to be under supervision.

22. That without a recommendation from this Court, it is unlikely that the BOP will grant the Defendant the additional Home Confinement time he seeks.

23. That on March 16, 2020, the undersigned defense counsel contacted the Assistant United States Attorney on this case and explained the nature of the motion but did not obtain concurrence in the relief sought.

WHEREFORE, Defendant Jerome Durden requests that this Honorable Court grant his Motion for Judicial Recommendation for Home Confinement and recommend to the Bureau of Prisons that he be placed in home confinement for the remainder of his sentence.

Respectfully Submitted,

/s/Judith S. Gracey

JUDITH S. GRACEY (P39766)

Attorney for Defendant

The Gracey Law Firm

2200 Beechmont Street

Keego Harbor, Michigan 48320

(248) 221-7726

Dated: March 20, 2020

DEFENDANT’S BRIEF IN SUPORT FOR JUDICIAL
RECOMMENDATION FOR HOME CONFINEMENT

The relief requested in this motion lies within the sound discretion of the trial court.

Respectfully Submitted,

/s/Judith S. Gracey

JUDITH S. GRACEY (P39766)

Attorney for Defendant

The Gracey Law Firm

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Keego Harbor, Michigan 48320

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Dated: March 20, 2020

CERTIFICATE OF SERVICE

I, Judith S. Gracey, hereby certify that on March 20, 2020, I electronically filed the foregoing documents, with the Clerk of the Court using the ECF system which sent notification of such filing to all attorneys of record.

s/Judith S. Gracey_____
JUDITH S. GRACEY